Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In the
UNITED STATES SUPREME COURT

FRANCK DUJARDIN,

Petitioner

v.

THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT and INTERNATIONAL DEVELOPMENT AGENCY,

Respondents

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia

---

PETITION FOR A WRIT OF CERTIORARI

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34 pp

QUESTION PRESENTED FOR REVIEW

Whether international financial organizations, such as the Respondents, are immune under federal law from a tort claim brought by a commercial partner where they defamatorily assert that they have fulfilled their contractual obligation?

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF CITATIONS iii

GLOSSARY 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND TREATY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 6

REASONS FOR GRANTING CERTIORARI 10

CONCLUSION 13

APPENDIX

D.C. Circuit's opinion ..... App. 1

D.C. Circuit's order denyng motion for publication ..... App. 4

D.C. Circuit's order denyng reh'g ..... App. 5

D.C. Circuit's order denying reh'g en banc ..... App. 6

U.S. District court's dismissal order ..... App. 7

Complaint ..... App. 9

Transcript of Proceedings before D.C. Circuit ..... App. 15

TABLE OF CITATIONS

Cases

Charles Morgan v. The International Bank for Reconstruction and Development, 752 F. Supp. 492 (D.D.C. 1990) 11

Chiriboga v. International Bank for Reconstruction and Dev., 616 F. Supp. 963 (D.D.C. 1985) 11

Janet E. Atkinson v. The Inter-American Development Bank, 332 U.S. App. D.C. 307; 156 F.3d 1335, (1998) 11, 13

Lutcher S.A. Celulose E Papel v. Inter-American Development Bank, 127 U.S. App. D.C. 238, 382 F.2d 454, 457 (1967) 6, 11, 12

Margot Rendall-Speranza v. Edvard A. Nassim, 323 U.S. App. D.C. 280, 107 F.3d 913 (1997) 11

Scheuer, Administratrix v. Rhodes, Governor Of Ohio, 416 U.S. 231, 236 (1974) 8

Susana Mendaro v. The World Bank, 230 U.S. App. D.C. 333, 717 F.2d 610 (1983) 7, 9, 11, 13

Federal Statutes

22 U.S.C. §284 et seq. 6

22 U.S.C. §286 et seq. 6

22 U.S.C. 286(g) 9

22 USC §288 et seq 7

28 U.S.C. 1254(1) 1

Treatises

Articles of Agreement of the European Bank for Reconstruction and Development, May 29, 1990, 29 I.L.M. 1077 (1990) 6

Articles of Agreement of the International Finance Corporation, May 25, 1955, 7 U.S.T. 2197, T.I.A.S. 3620 6

Articles of Agreement of the International Development Association, August 9, 1960, T.I.A.S. No. 4607, 11 U.S.T. 2284, Art. VIII 2, 6

Articles of Agreement of the World Bank, Dec. 27, 1945, as amended, T.I.A.S. 5929, 16 U.S.T. 1942, Art. VII 3, 6

Articles of Agreements for the Inter-American Development Bank, Apr. 8, 1959, 10 U.S.T. 3029, T.I.A.S. 4397 6

Executive Orders

Executive Order 11966, 42 Fed. Reg. 4331(1977) 3

Executive Order 9751, 11 Fed. Reg. 7713 (1946) 4

GLOSSARY

"The World Bank" means the International Bank For Reconstruction and Development, a Respondent.

"IDA" means the International Development Association, a Respondent that has been misnamed in the caption of the case as the International Development Agency.

"Dujardin" means Mr. Franck Dujardin, the Petitioner.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the D.C. Circuit is an unpublished opinion. Dujardin v. International Bank for Reconstruction and Development, No. 00-7206, 2001 U.S. App. LEXIS 13893 (D.C. Cir. May 22, 2001), reproduced at App. 1. The orders of the United States Court of Appeals for the D.C. Circuit denying the motions for publication, rehearing, and rehearing en banc are reproduced at App. 4-6. The dismissal order of the United States District Court for the District of Columbia, of July 27, 2000, is unpublished. Dujardin v. International Bank for Reconstruction and Development, No. 99-3398 (D.D.C. July 27, 2000), reproduced at App. 7.

JURISDICTION

The decision of the United States Court of Appeals for the D.C. Circuit was entered on May 22, 2001. App. 1. The orders denying the motions for publication, rehearing, and hearing en banc were entered on July 13, 2001. App. 4-6. The Supreme Court has jurisdiction to review a decision from a United States Court of Appeals pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL AND TREATY PROVISIONS INVOLVED

Articles of Agreement of the International Development Association, August 9, 1960, T.I.A.S. No. 4607, 11 U.S.T. 2284, Art. VIII. ("IDA Articles").

Article VIII: Status, Immunities and Privileges
Section 1. Purposes of Article
To enable the Association to fulfill the functions with which it is entrusted, the status, immunities and privileges provided in this Article shall be accorded to the Association in the territories of each member.

Section 2. Status of the Association
The association shall possess full juridical personality and, in particular, the capacity:

- to contract;
- to acquire and dispose of immovable and movable property;
- to institute legal proceedings.

Section 3. Position of the Association with Regard to Judicial Process
Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Association.

Articles of Agreement of the World Bank, Dec. 27, 1945, as amended, T.I.A.S. 5929, 16 U.S.T. 1942, Art. VII. ("World bank Articles")

Article VII: Status, Immunities and Privileges
Section 1. Purposes of Article
To enable the Bank to fulfill the functions with which it is entrusted, the status, immunities and privileges provided in this Article shall be accorded to the Bank in the territories of each member.

Section 2. Status of the Bank
The Bank shall possess full juridical personality and, in particular, the capacity:
(i) to contract;
(ii) to acquire and dispose of immovable and movable property;
(iii) to institute legal proceedings.

Section 3. Position of the Bank with Regard to Judicial Process
Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Executive Order 11966, 42 Fed. Reg. 4331 (1977).

> By virtue of the authority vested in me by Section 1 of the International Organizations Immunities Act (59 Stat. 669, 22 U.S.C. 288), and as President of the United States of America, having found that the United States participates in the following organizations, it is hereby ordered as follows:
>
> Section 1. The International Development Association, in which the United States participates pursuant to the Act of Congress approved June 30, 1960 (74 Stat. 293, 22 U.S.C. 284) and the Articles of Agreement of the International Development Association (11 U.S.T. 2284, T.I.A.S. 4607), is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act, **provided that, this designation shall not affect in any way the applicability of Section 3, Article VIII, of the Articles of Agreement of the International Development Association**. (Emphasis added).

Executive Order 9751, 11 Fed. Reg. 7713 (1946).

> By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act, . . ., I hereby designate such organizations as public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the said Act:
>
> Inter-American Coffee Board
> Inter-American Institute of Agricultural Sciences
> Inter-American Statistical Institute
> International Bank for Reconstruction and Development
> International Monetary Fund
> Pan American Sanitary Bureau

The designation of the above-named organizations and of those named in Executive Order No. 9698 of February 19, 1946, as public international organizations within the meaning of the said International Organizations Immunities Act is not intended to abridge in any respect privileges and immunities which such organizations have acquired or may acquire by treaty or Congressional action; **provided, that with respect to the International Bank for Reconstruction and Development, such designation shall not be construed to affect in any way the applicability of the provisions of section 3, Article VII, of the Articles of Agreement of the Bank** as adopted by the Congress of the United States in the Bretton Woods Agreements Act of July 31, 1945. (Emphasis added).

STATEMENT OF THE CASE

The Respondents are international financial organizations to which the United States belongs. 22 U.S.C. §284 et seq. (IDA) and 22 U.S.C. §286 et seq. (World Bank).

Unlike other international organizations, their respective charters strictly prohibit them from participating in political activities: "only economic considerations shall be relevant to their decisions". IDA Articles, supra Art. V §6 and World Bank Articles, supra Art. IV §10. IDA's purpose is "to promote economic development . . . in the less-developed areas of the world" by providing loans at below market rates to selected economic participants. IDA Articles, supra, Art. I.

The original member states of the Respondents chose to include a waiver of immunity in their respective charters, (hereinafter the "Waiver"), "waiving immunity in broad terms". Lutcher S.A. Celulose E Papel v. Inter-American Development Bank, 127 U.S. App. D.C. 238, 382 F.2d 454, 457 (1967). The original member states reserved immunity only for one class of claims: those "brought by members or persons acting for or deriving claims from members". IDA Articles, supra, Art. VIII §3, reproduced at page 2. Other major international financial organizations to which the United States belongs have incorporated, word for word, the Waiver in their respective charters. [1]

The Respondents have been designated by executive orders international organizations entitled to the immunities

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[1] See Articles of Agreements for the Inter-American Development Bank, Apr. 8, 1959, 10 U.S.T. 3029, T.I.A.S. 4397; International Finance Corporation, May 25, 1955, 7 U.S.T. 2197, T.I.A.S. 3620, and European Bank for Reconstruction and Development, May 29, 1990, 29 I.L.M. 1077 (1990).

provided by the International Organizations Immunities Act of 1945[2]; "provided that such designation shall not affect in any way the applicability of [the Waiver]". See Executive Orders, supra, reproduced at page 4-5. By the time IDA received such a designation, the United States Court of Appeals for the D.C. Circuit, ("D.C. Circuit"), had already interpreted the Waiver, nine years earlier, in the Lutcher case:

> The drafters thus manifested full awareness of the immunity problem and we conclude they must have been aware that they were waiving immunity in broad terms rather than treating narrowly a venue problem. Thus we cannot read it in a restrictive sense; we read it as permitting the assertion of a claim against the Bank by one having a cause of action for which relief is available. Lutcher, 382 F.2d at 457.

Fifteen years after the Lutcher decision, while noting the creation of the Respondents' administrative tribunal to resolve disputes with its staff, the D.C. Circuit held that the Waiver could not apply to claims brought by its employees. Susana Mendaro v. The World Bank, 230 U.S. App. D.C. 333, 717 F.2d 610, 617 (1983).[3] However, in unambiguous terms, the Mendaro court reiterated that these international organizations are not immune from claims arising out of their normal commercial transactions:

> A waiver of immunity with respect to the World Bank's commercial transactions with the outside world is also evident under Article VII section 3. If this immunity were not waived the Bank would be unable to purchase office equipment or supplies on

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[2] 22 USC §288 et seq.

[3] See also, Janet E. Atkinson v. The Inter-American Development Bank, 332 U.S. App. D.C. 307; 156 F.3d 1335, (1998).

> anything other than a cash basis. Even the normal use of telephone and utilities might be placed on other than usual commercial terms. Such a restriction would unreasonably hobble its ability to perform the ordinary activities of a financial institution operating in the commercial marketplace. Id. at 618.

The Dujardin decision affirmed the lower court's dismissal order. "In passing on a motion to dismiss, . . ., allegations of the complaint should be construed favorably to the pleader". Scheuer, Administratrix v. Rhodes, Governor Of Ohio, 416 U.S. 231, 236 (1974).

Dujardin alleges that he had a contract with IDA whereby IDA promised to pay him a sum certain.[4] Dujardin alleges that while he was enlisting the support of his government to enforce his contract, IDA secretly represented to the French government officials that IDA had paid him the agreed sum, the clear inference of which is that Dujardin was not honest. The lower court agreed, "find[ing] that such an inference might, in fact, make the Plaintiff appear 'ridiculous'. Whether or not the alleged defamatory statements were actually attributed such a meaning by the officials is a question for a jury to decide." Dujardin v. International Bank for Reconstruction and Development, No. 99-3398 (D.D.C. July 27, 2000).

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[4] Dujardin was a consultant providing services to IDA's borrower. The parties had an agreement whereby most of Dujardin's consulting salary would be paid by IDA. By fax, IDA agreed to pay Dujardin's anticipated severance pay estimated at $169,168.00. Mr. Dujardin relied on IDA's promise to continue providing consulting services to IDA's client. Although, IDA has not paid one dollar to Dujardin toward his severance pay, it secretly represented to the French government officials that it did. See, Complaint at App. 9-14.

Dujardin became aware of the defamatory statement several years after the statute of limitations had run on his contract claim. Dujardin alleges that, but for the defamation, IDA would have had to meet its contractual obligation in the face of mounting pressure from the French government. See Complaint ¶23 at App. 13. Dujardin filed his claim with the United States District Court for the District of Columbia where the tort was originally committed and pursuant to 22 U.S.C. 286(g).

The question presented here was argued before the D.C. Circuit in similar terms: "Whether the Appellees have waived their immunity in regard to a tort claim brought by an intended third-party beneficiary of their lending commitment and a direct promisee, where they defamatorily assert that they have fulfilled their promises. Statement of the Issue in Appellant's Brief.

The Dujardin court overruled its prior interpretation of the Waiver developed in the Lutcher and Mendaro decisions by stating: "that such a suit is brought by a former employee of a borrower of the World Bank and to whom it promised employment benefits, does not affect the Bank's immunity." D.C. Circuit's opinion, at App. 3, (emphasis added). Under this new standard, the fact that the plaintiff is a promisee of the international financial organization is no longer relevant and therefore there is no need to determine the nature of the commercial relationship between the parties.

REASONS FOR GRANTING CERTIORARI

This petition must be granted to restore to international financial organizations, such as the Respondents, the financial credibility they need to accomplish their missions. Unlike policy-making international organizations, such as the United Nations or the International Monetary Fund, the Respondents cannot function efficiently if their commercial partners are not unequivocally assured that the Respondents' promises are enforceable.

Arguably, if a policy-making international organization failed to pay its creditors, it might still be able to function with the help of its member states or by negotiating on an ad-hoc basis appropriate waivers of immunity. International financial organizations do not have that luxury. As any banking institution, the Respondents' indispensable asset is their unwavering commitment to make good on their financial obligations. Such a commitment cannot be contingent on the promisee's ability to negotiate an effective waiver of immunity or on changing judicial interpretations of the Waiver. As the original member states of the Respondents understood, only an unconditional waiver of immunity as expressed in their charter can meet the expectation of their commercial partners.

The Lutcher[5] case and the present one are vivid proof that a direct breach is not the only means that can be used to frustrate contractual expectations. The unconditional waiver

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[5] Lutcher involved two plaintiffs: the corporate borrower of the international financial organization and an employee of the borrower. The borrower alleged a breach of contract and a tortious interference with business interests designed to frustrate the contract, whereas the employee tried to enforce the contract as a third-party beneficiary. None of the claims was found to be barred by immunity.

of immunity granted to the Respondents' commercial partners must apply to any claim as long as the underlying act or omission has the effect, or was intended, to thwart the plaintiff's contractual bargain. See Lutcher, 382 F.2d at 460, where the court found that the international financial organization was not immune from an allegation that it tortiously interfered with its commercial partner's business interest.

Since Lutcher and until the Dujardin opinion, all the decisions of the D.C. Circuit recognized in dicta the need for international financial organizations, such as the Respondents, to protect their commercial credibility. On several occasions, while granting immunity for claims arising out of the international financial organization's relationship with its staff, the D.C. Circuit stated that the Waiver would apply to "potential plaintiffs to whom [the international financial organization] must waive immunity to accomplish its chartered goals." Mendaro, 717 F.2d at 615 and Atkinson, 156 F.3d at 1338. For the first time since Lutcher, this case does not arise from the international financial organization's relationship with its staff.[6] Not only is Dujardin arguably a creditor, but, and perhaps more importantly, he also represents a class of commercial partners (international consultants) who are indispensable for IDA to accomplish its

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[6] The Respondents successfully argued before a French tribunal that there were no indicia of employment relationship between the parties. See Complaint ¶12, at App. 11. All other cases brought against international financial organizations, such as the Respondents, arose out of the employment relationship between the parties. See Mendaro, 717 F.2d 610 (1983), Chiriboga v. International Bank for Reconstruction and Dev., 616 F. Supp. 963 (D.D.C. 1985), Charles Morgan v. The International Bank for Reconstruction and Development, 752 F. Supp. 492 (D.D.C. 1990), Margot Rendall-Speranza v. Edvard A. Nassim, 323 U.S. App. D.C. 280, 107 F.3d 913 (1997), and Atkinson, 156 F3d 1335 (1997).

goal. One of IDA's stated purposes[7] is to give guarantees to international consultants, like Dujardin, to entice them to provide services to its insolvent clients[8]. Not only did the D.C. Circuit fail to apply its dicta, but it expressly overruled it.

The D.C. Circuit created a new interpretation of the Respondents' Waiver whereby the fact that a plaintiff has a contract with the Respondents "does not affect the [Respondents]' immunity". This new interpretation of the Waiver is consistent with the Respondents' view, advocated during oral argument, proposing that "the existence of a contractual right, . . . , is absolutely irrelevant." See, Transcript of Proceedings before the D.C. Circuit at App. 16 L. 15-25. Based on this new unarticulated standard, the Waiver would presumably apply only to suits brought by the Respondents' bondholders and other beneficiaries of its guarantees as was argued unsuccessfully before the Lutcher court. Lutcher, 382 F2d at 456.

We have found no case since the 1967 Lutcher decision where the Respondents sought immunity for a claim brought by one of their commercial partners. As with any banking institution, it is unconceivable that the Respondents have not had their share of disputes with commercial partners it promised to pay. We can only conclude that if none of these

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[7] "The mission of IDA is to support efficient and effective programs to reduce poverty and improve the quality of life in its poorest member countries. IDA helps build the human capital . . . and physical infrastructure needed to bring about equitable and sustainable growth", (emphasis added). What is IDA? Published on the World Bank website at http://www.worldbank.org/ida/idao.html and cited by Appellees in footnote 4 of Appellees' Motion to Dismiss.

[8] Pursuant to its charter, IDA can provide financing commitments only to those who are unable to find financing with the World Bank or any other bank. IDA Articles of Agreement, supra Art. V §1(c).

disputes reached a court, the Respondents must have addressed them responsibly and refused to challenge the Lutcher decision.

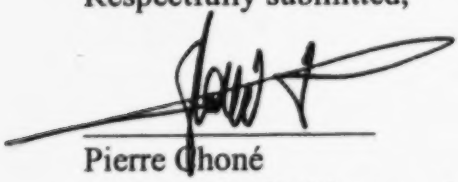
It is perplexing that the Respondents chose this case to expand their immunity since among all possible cases it presents the least judicial interference with the Respondents' affairs. Indeed, Dujardin needs no discovery to prove his case: (1) the alleged defamatory document is already in his possession given to him by those to whom it was published, (2) four months after the secret publication of the defamatory statement, the Respondents implicitly admitted its falsity by stating in its pleadings before a French tribunal that Dujardin had not received the sum certain promised to him, See Complaint ¶13 at App. 11, (3) the D.C. District Court found that the alleged defamatory statement was potentially defamatory and the Respondents did not appeal this finding, and (4) the amount of actual damages is already known and equal to Dujardin's contractual bargain that the defamation prevented him from receiving. Beside the interpretation of the Waiver, the only remaining issue in this case- whether the statement was defamatory- is ready to be presented to a jury.

Conclusion

A writ of certiorari must be granted to restore the original waiver of immunity accorded by the Respondents' original member states, applied by the Lutcher court, emphasized by the U.S. executive branch of government, and recognized in dicta by the D.C. Circuit in the Mendaro and Atkinson decisions. For the first time since the creation of the Respondents, a judicial decision carves out of their Waiver a class of commercial partners. Beyond the obvious injustice to Dujardin, who is left without any forum, lies a peril for the Respondents. Indeed, responsible commercial partners of the Respondents may now wonder whether they will be in the next class of commercial partners that the Respondents might

seek to carve out of their Waiver. This will create an uncertainty for the Respondents' commercial partners, and for that matter creditors and debtors, that no sound banking institution would or should entertain.

Respectfully submitted,



Pierre Choné
Attorney for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-7206 September Term 2000

Franck Dujardin, FILED MAY 22, 2001

Appellant

v.

International Bank for Reconstruction and Development, *et al.*,

Appellees

On Appeal from the United States District Court for the District of Columbia

Before: HENDERSON, TATEL and GARLAND, *Circuit Judges.*

JUDGMENT

This case was heard on the record from the United States District Court for the District of Columbia and on the briefs and arguments by counsel. The court has accorded the arguments full consideration and has determined the issues presented occasion no need for a published opinion. *See* D.C. Cir. Rule 36(b). The court concludes, specifically, that the appellees are immune from the appellant's defamation suit under the International Organizations Immunities Act of 1945 (IOIA), 22 U.S.C. § 288a(b).

Under the IOIA, 22 U.S.C. §§ 288 *et seq.*, international organizations, such as the International Bank for Reconstruction and Development (IBRD or World Bank) and the International Development Agency (IDA), that have been recognized by the President through an "appropriate

Executive Order," 22 U.S.C. §288, are afforded immunity from suit.[1] "International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract. "22 U.S.C. 288a(b). The court recently interpreted this language to grant international organizations absolute immunity from all lawsuits and claims. *See Atkinson v. Inter-American Dev. Bank,* 156 F.3d 1335, 1341-42 (D.C. Cir. 1998). There are only two sources of limitation to the immunity: (1) the organization itself may waive its immunity and (2) the President may specifically limit the organization's immunities when he selects the organization as one entitled to enjoy the IOIA's privileges and immunities. *Mendaro v. World Bank,* 717 F.2d 610, 613 (D.C. Cir. 1983). The World Bank, of which the IDA is a sub-entity, has waived its immunity from suit brought by its debtors, creditors, bondholders and those other potential plaintiffs as to whom the Bank would have subjected itself to suit in order to achieve its chartered objectives. *See id.* at 615; *see also Atkinson,* 156 F. 3d at 1338.

In determining whether the World Bank has waived its immunity here, we ask whether "the particular type of suit would *further* the Bank's objectives." *Atkinson,* 156 F.3d at 1338 (emphasis original). If it does not, "the Bank's immunity should be construed as *not waived." Id.* (emphasis original). The appellant's defamation suit neither furthers the World Bank's objectives nor enhances the Bank's ability to

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[1] The IBRD and the IDA have been designated "public international organizations" pursuant to Executive orders. *See* Exec. Order No. 9751, 11 Fed. Reg. 7713 (1946) (IBRD); Exec. Order No. 11966, 42 Fed. Reg. 4331 (1977) (IDA).

participate in commercial transactions. *See id.* That such a suit is brought by a former employee of a borrower and to whom it promised employment benefits, does not affect the Bank's immunity. Accordingly, it is

ORDERED that the judgment from which this appeal has been taken be affirmed substantially for the reasons stated in the district court's memorandum opinion of July 27, 2000. *See Dujardin v. International Bank for Reconstruction and Development,* No. 99-3398 (D.D.C. July 27, 2000).[2]

The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41(a)(1).

FOR THE COURT:

Mark J. Langer, Clerk

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[2] Because the appellees are immune from suit, we have no occasion to determine the legal adequacies of the appellant's defamation claim. *Cf. Lutcher S.A. Celulose E Papel v. Inter-Am. Dev. Bank,* 382 F.2d 454, 460-61 (D.C. Cir. 1967) (proceeding to merits only after concluding Bank had waived immunity).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-7206 September Term 2000

Franck Dujardin, FILED JUL. 13, 2001

Appellant

v.

International Bank for Reconstruction and Development, *et al.*,

Appellees

Before: Henderson, Tatel and Garland, Circuit Judge.

ORDER

Upon consideration of appellant's Motion for Publication, it is ORDERED that the motion is denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-7206 September Term 2000

Franck Dujardin, FILED JUL. 13, 2001

Appellant

v.

International Bank for Reconstruction and Development, *et al.*,

Appellees

Before: Henderson, Tatel and Garland, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing filed June 20, 2001, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-7206 September Term 2000

Franck Dujardin, FILED JUL. 13, 2001

Appellant

v.

International Bank for Reconstruction and Development, *et al.*,

Appellees

BEFORE: Edwards, Chief Judge; Williams, Ginsburg, Sentelle, Henderson, Randolph, Rogers, Tatel and Garland, Circuit Judges.

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Robert A. Bonner
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Franck Dujardin
7 impasse de la Fontaine
St Cyr l'Ecole 78210
France

Plaintiff

v.

International Bank for Reconstruction
& Development
James D. Wolfensohn, President
1818 H Street N.W.
Washington, DC 20433

and

International Development Agency
James D. Wolfensohn, President
1818 H Street N.W.
Washington, DC 20433

Defendants

Civil Action No: 99-3398

FILED JUL. 27 2000

ORDER

Upon consideration of Defendants' Motion to Dismiss,

the Plaintiff's Opposition, and the Reply thereto, and for the

reasons stated in the accompanying memorandum of law, it is by the Court this 26th day of July 2000,

ORDERED that the Defendants' Motion to Dismiss pursuant to Federal Rules of Civil Procedure 12(b) (1) and 12 (b) (6) is GRANTED, and this case is dismissed with prejudice; and it is further

ORDERED that the Clerk shall mail copies of this Order to:

Pierre Chone', Esq.
P.O. Box 15430
Washington, D.C. 20003

Thomas C. Green, Esq.
Mark D. Hopson, Esq.
Luisa Caro, Esq.
1722 Eye Street, N.W.
Washington, D.C. 20006

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Franck Dujardin 7 impasse de la Fontaine St Cyr l'Ecole 78210 France	
Plaintiff	Civil Action No: 99-3398
v.	
International Bank for Reconstruction & Development James D. Wolfensohn, President 1818 H Street N.W. Washington, DC 20433	
and	
International Development Agency James D. Wolfensohn, President 1818 H Street N.W. Washington, DC 20433	
Defendants	

COMPLAINT IN ACTION FOR DAMAGES FOR LIBEL

Plaintiff, Franck Dujardin, by and through his attorney, Pierre Choné, respectfully represents as follows:

JURISDICTION

1. The jurisdiction of this Court is founded on 22 U.S.C. §286g (1999), Article VII Section 3 of the Articles of Agreement of the International Bank for Reconstruction & Development (hereinafter, the "World Bank") and Article VIII Section 3 of the Articles of Agreement of the International Development Association (hereinafter, "IDA") since the complaint arises out of Defendants' lending activities.

FACTUAL BACKGROUND

2. For many years the former government of Zaire, through a public Zairian company, ONATRA (Office National des Transports), borrowed money from Defendants to modernize its economy.
3. As part of the contractual relationship existing between ONATRA and Defendants, Mr. Dujardin, the Plaintiff, was hired by ONATRA, after approval by the World Bank, as a computer engineer on April 13, 1978 with the understanding that his salary and other benefits would be paid primarily by Defendants.
4. On October 28, 1992, pursuant to the loan 2027 ZR of June 30, 1989, issued by IDA and administered by the World Bank (hereinafter, the "Loan"), ONATRA requested the World Bank's approval to pay Mr. Dujardin's anticipated contractual severance pay.
5. On November 18, 1992, the World Bank transmitted by fax its approval to pay Mr. Dujardin's severance pay from the Loan.
6. However, on December 29, 1992, in response to ONATRA's request to release the necessary funds to pay Mr. Dujardin's severance pay of $169,168.00, and two days before the termination of his employment, the World Bank withdrew its prior approval of November 18, 1992.

7. Mr. Dujardin's employment with ONATRA was terminated on December 31, 1992.
8. Subsequent to the termination of Mr. Dujardin's employment, ONATRA sent several written requests to the World Bank to pay Mr. Dujardin's severance pay.
9. To this day, Mr. Dujardin has received no payment of any kind from ONATRA, the World Bank or IDA toward his severance pay.
10. Because of the political instability in the country, Mr. Dujardin was forced to leave Zaire in 1993 and returned to France, his country of nationality.
11. A Zairian forum being unavailable to him, Mr. Dujardin sued the World Bank in 1996 before a French tribunal, Conseil des Prud'Hommes, where jurisdiction is limited to employment issues.
12. On November 27, 1996, the French tribunal dismissed the action for lack of jurisdiction finding, as the World Bank argued, that ONATRA was the employer. The ruling was affirmed by an appellate court on May 20, 1997.
13. In its brief to the French tribunal on March 25, 1996, the World Bank recognized that no funds were disbursed from the Loan to pay Mr. Dujardin's severance pay.
14. Following the dismissal of the French action, Plaintiff intensified his efforts to resolve the dispute through diplomatic channels.
15. Particularly instrumental in support of Mr. Dujardin's claim were the mayor and the deputé of his town (representative to the French national assembly, hereinafter the "Deputé") who convinced the French Minister of foreign affairs to request an explanation from the World Bank as to why Mr. Dujardin received no severance pay.
16. On or about February of 1999, Plaintiff received a copy of a letter dated January 15, 1999, from the

Office of the French Minister of Foreign Affairs to Mr. Dujardin's Deputé (hereinafter, the "Correspondence").

17. In the Correspondence, the French Minister informs the Deputé that the World Bank, in response to his inquiry, confirmed its view expressed in a memorandum of December 26, 1996 (hereinafter, the "Memorandum") which was attached to the Correspondence.
18. In the Memorandum, the writer asserts as a matter of fact that "[t]he promise given at the time by the World Bank to ONATRA was in regard to the payment of Mr. Dujardin's severance pay as provided in his contract with ONATRA. This promise has been fulfilled."

DEFAMATORY STATEMENT

19. The factual assertion contained in the Memorandum squarely contradicts Mr. Dujardin's affirmation made to the French officials that he received zero dollars ($0) toward his severance pay and was meant to portray Mr. Dujardin as a liar who was attempting to collect a second time what had already been paid to him.
20. The publication of the Memorandum in January 1999 in Washington and Paris was not made during an adversarial proceeding that may have provided immunity to Defendants.
21. Any qualified immunity that might have been available was lost when the writer of the Memorandum purposefully or recklessly disregarded the truth, as previously presented by the World Bank before the French tribunal, with the intent to deprive Mr. Dujardin of his good name, reputation, and support from the French Minister of Foreign Affairs as well as the Mayor and deputé of his town.

DAMAGES

22. By reason of the aforesaid publication of the Memorandum, Plaintiff has been greatly injured in his good name, fame, reputation, and standing in his community.
23. By reason of the aforesaid publication of the Memorandum, Plaintiff lost the necessary support from the French government to collect his severance pay worth U.S. $169,168.00 in 1992, representing the biggest part of his actual damages from the Defamation.
24. The Memorandum was published with malicious intent, justifying the imposition of punitive damages.

RESPONDEAT SUPERIOR

25. The writer of the Memorandum, Mr. Benoit Loutrel was an employee or under the control of Defendants in Washington.
26. Defendants authorized the Memorandum and its publication in Washington and Paris.
27. The writer of the Memorandum made the defamatory statement in order to protect Defendants' interest.
28. Defendants subsequently ratified the defamatory statement.

RELIEF

29. Wherefore, Plaintiff demands judgment against Defendants jointly and severably for actual damages, punitive damages, costs, and attorney fees.
30. Plaintiff requests a trial by jury.

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Transcript of Proceedings

In the United States Court of Appeals
For the District of Columbia Circuit

Franck Dujardin,

Appellant,

v. No. 00-7206

International Bank for Reconstruction and Development, et al.,

Appellees.

Pages 1 through 25

Washington, D.C.
May 14, 2001

Page 16

with the purposes of the loans. It is consistent with our own policies.

The Court: Are there any cases as to whether that makes the consultant a third-party beneficiary of the contract?

Mr. Hopson: We some cite some cases, Your honor, about the standard rule of law, in this country at least, that says third-party beneficiary status is a matter of intention. The only --

The Court: Are there any cases as to whether a --

Mr. Hopson: About the Bank specifically?

The Court: Yes.

Mr. Hopson: No, Your Honor. There are not. But with respect to this contract point, even if Mr. Dujardin is assumed to have a contract and even if we

assume that he was relying 100 percent on his ability to sue the bank, which I think is a fallacious assumption given that he worked for 14 years under a contract that said his remedies are arbitration or lawsuit in Zaire.

Assuming that to be true, the existence of a contractual right whether we call it reliance or whether we call it third-party beneficiary is absolutely irrelevant.

Supreme Court, U.S.
FILED
NOV 9 2001
OFFICE OF THE CLERK

No. 01-607

IN THE

Supreme Court of the United States

FRANCK DUJARDIN,

Petitioner,

v.

THE INTERNATIONAL BANK FOR RECONSTRUCTION & DEVELOPMENT AND INTERNATIONAL DEVELOPMENT ASSOCIATION,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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November 9, 2001

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QUESTION PRESENTED

Whether the court of appeals and district court correctly applied the well-established and properly stated rule of law governing statutory immunity under the International Organizations Immunities Act.

PARTIES TO THE PROCEEDING AND STATEMENT REQUIRED BY RULE 29.6

The only parties to this proceeding are listed in the caption. Pursuant to Rule 29.6 of the Rules of this Court, Respondents state that they have no parent corporations and that they have not issued publicly held stock.

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, the International Bank for Reconstruction and Development ("IBRD") and the International Development Association ("IDA"), respectfully request that this Court deny the petition for a writ of certiorari filed by Petitioner Franck Dujardin to review the decision of the United States Court of Appeals for the District of Columbia.

COUNTERSTATEMENT OF THE CASE

The IBRD and the IDA, collectively known as the World Bank, are international organizations granted immunity under the International Organizations Immunities Act ("IOIA"), 22

U.S.C. § 288a(b). Pet. App. 1-2.[1] Petitioner Franck Dujardin was a consultant for an agency of the Government of Zaire, which was one of the World Bank's borrowers. *Id.* at 10. Dujardin alleged that after he was terminated by his employer in 1992, his severance payment was not made. *Id.* at 11.

Petitioner Dujardin brought a *defamation* action in 1999 against the World Bank in U.S. District Court for the District of Columbia. Petitioner alleged that the World Bank defamed him by stating that the World Bank had no outstanding obligation regarding Dujardin's severance. Pet. App. 12-13. The district court granted the World Bank's motion to dismiss on the ground that the World Bank was immune from Dujardin's defamation claim under the IOIA. *Id.* at 3, 8.

Only a week after hearing argument in this case, the D.C. Circuit issued its unpublished opinion affirming the district court.[2] The court of appeals concluded that "appellees are immune from the appellant's defamation suit under the [IOIA]." Pet. App. 1. In reaching its conclusion, the court of appeals applied the legal standard set forth in *Atkinson* v. *Inter-American Development Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998). Pet. App. 2-3.

Under the *Atkinson* standard, the Bank's statutorily granted immunity is not waived unless the "particular type of suit would *further* the Bank's objectives." *Atkinson*, 156 F.3d at 1338. If the suit does not further the Bank's objectives, "the Bank's immunity should be construed as *not waived*." *Id.*; see also *Mendaro* v. *World Bank*, 717 F.2d 610, 617-18 (D.C. Cir. 1983). The court of appeals concluded that because the World Bank's objectives would not be furthered by waiving

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[1] The World Bank is also granted immunity by its Articles of Agreement, which the United States accepted and which have the force of law under 22 U.S.C. § 286.

[2] The court of appeals denied Petitioner's motion to publish its opinion. Pet. App. 4.

its immunity for defamation claims, the Bank was immune from Petitioner's claim. Pet. App. 3.

ARGUMENT

The petition for certiorari should be denied. The petition involves no conflict among the circuits or with a state court of last resort. Rather, the court of appeals' decision simply applies the well-established and properly stated rule of law governing the statutorily granted immunities of international organizations. See *Atkinson* v. *Inter-American Dev. Bank*, 156 F.3d 1335, 1338 (D.C. Cir. 1998); *Mendaro* v. *World Bank*, 717 F.2d 610, 617-18 (D.C. Cir. 1983); see also *Tuck* v. *Pan Am. Health Org.*, 668 F.2d 547, 550 (D.C. Cir. 1981); *Broadbent* v. *Organization of Am. States*, 628 F.2d 27, 35-36 (D.C. Cir. 1980). Applying the established rule of law to the facts in this case, the court of appeals correctly concluded that the World Bank's immunity had not been waived as to defamation claims. The decision below raises no issue worthy of this Court's review.

Petitioner asserts that this Court should review the decision below because "responsible commercial partners of the Respondents may now wonder whether they will be in the next class of commercial partners that the Respondents might seek to carve out of their Waiver. This will create an uncertainty for the Respondents' commercial partners." Pet. 13-14.

The World Bank has operated for over 50 years without waiving its immunity for defamation suits. Both the district court and the court of appeals agreed that the Bank's objectives would not be furthered by waiving its immunity for defamation claims. Petitioner's argument that the World Bank faces "peril" in its relationships with commercial partners if it maintains its immunity from defamation suits, Pet. 13, defies decades of experience and common sense and thus provides no reason to grant certiorari in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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